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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

31936-CNT1

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name \_\_\_\_\_

Application Number

10/814,009

Filed

03/31/2004

First Named Inventor

WASHBURN, Alan F.

Art Unit

3671

Examiner

TORRES, Alicia M.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒

attorney or agent of record.

Registration number 44,181

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

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September 21, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

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\*Total of 3 forms are submitted.

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9-22-05

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	)	
	)	Docket No. 31936-CNT1
WASHBURN, Alan	)	
	)	Group Art Unit: 3671
Serial No.: 10/814,009	)	
	)	Confirmation No.: 5559
Filed: 03/31/2004	)	
	)	Examiner: TORRES, Alicia M.
Title: ARTICULATED MOWER FOR MOWING	)	
AROUND FENCEPOSTS AND OTHER	)	Customer No.: 23589
UPRIGHT OBSTRUCTIONS	)	

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Remarks

These remarks address clear errors in the rejections of independent claims 1, 11, and 24 of the present application.

Independent claim 1 is rejected as being anticipated by U.S. Patent No. 3,003,299 (Smith). Independent claim 1 recites “a U-joint coupled between the first and second drive shafts for rotation therewith.” The U-joint recited in independent claim 1 is clearly not disclosed in Smith.

The Examiner states that Smith discloses “a U-joint (32, comprised of parts 24, 26, 28, 30, 50) ... coupled between the first (46) and second (40) drive shafts for rotation therewith .....” (Office Action of June 21, 2005, page 3, lines 11 and 12). Parts 24, 26, 28, 30, and 50 of Smith do not meet the U-joint limitation of claim 1.

Claim 1 states that the U-joint is coupled between the drive shafts “**for rotation therewith.**” Thus, the U-joint recited in claim 1 rotates with the drive shafts. Smith’s assembly of parts 24, 26, 28, 30, and 50 (called a U-joint by the Examiner) clearly does not rotate with the drive shafts. In fact, parts 24, 26, 28, 30, and 50 of Smith are simply structural elements that support the drive shafts and house the bevel gears connecting the drive shafts. Therefore, Smith does not

disclose the “U-joint coupled between the first and second drive shafts for rotation therewith” recited in independent claim 1.

In addition, Smith’s assembly of parts 24, 26, 28, 30 and 50 clearly does not fall within the ordinary meaning of the term “U-joint.” The paragraph bridging pages 11 and 12 of Applicant’s Amendment filed February 25, 2005, discusses the ordinary meaning of the term “U-joint” and why Smith does not disclose a U-joint. In summary, the ordinary meaning of the word “U-joint” (universal joint) is a mechanism for transmitting torque between two rotating shafts while simultaneously permitting variation in the angle of intersection between the axes of rotation of the shafts. As mentioned above, parts 24, 26, 28, 30, and 50 of Smith simply support the drive shafts and house the bevel gears connecting the drive shafts. Parts 24, 26, 28, 30, and 50 of Smith do not transmit torque between the drive shafts nor permit variation in the angle of intersection between the axes of rotations of the drive shafts. Rather, parts 26, 28, 30, 32, and 50 of Smith actually prevent variation in the angle of intersection between the axes of rotation of the drive shafts by fixing the drive shafts at 90° relative to one another. Therefore, parts 24, 26, 28, 30, and 50 of Smith do not disclose the U-joint recited in claim 1.

Independent claim 11 is rejected as being obvious over U.S. Patent No. 4,697,405 (DeWitt) in view of U.S. Patent No. 5,035,107 (Scarborough). Independent claim 11 recites “a motor rigidly coupled to the frame and drivingly connected to the deck, so as to power the deck independently of the vehicle.” The Examiner admits that “DeWitt fails to disclose a motor rigidly coupled to the frame and drivingly connected to the deck, so as to power the deck independently of the vehicle, as per claim 1.” (Office Action of April 21, 2005, page 7, lines 12 and 13). However, the Examiner states, “It would have been obvious ... to include the frame mounted motor of Scarborough on the device of DeWitt in order to isolate the auxiliary motor.” (Office Action of April 21, 2005, page 7, lines 17-19).

Applicant submits that the motivation provided by the Examiner for combining the frame-mounted motor of Scarborough on the device of DeWitt is improper and, therefore, a proper *prima facie* ease of obviousness has not been established. The Examiner states that the motivation to combine Scarborough and DeWitt is to “isolate the auxiliary motor.” The Examiner further states, “The idea taught by Scarborough is that it is desirable to isolate the motor from obstruction.” (Office

Action of April 21, 2005, page 10, lines 14 and 15). However, the reason Scarborough teaches that it is desirable to isolate the motor is to provide “a low profile extension of the primary mower for mowing under bushes, trees, fence rails and the like.” (Scarborough, col. 3, lines 23-25). This same rationale can not be applied to the device of DeWitt because the device of DeWitt does not employ a low profile extension for mowing under objects. Rather, the device of DeWitt employs a high profile extension that extends over the object (e.g., fence rail) and cuts vegetation on the opposite side of the object. Thus, because the reason provided by Scarborough for isolating the motor from the auxiliary trim blade assembly finds no application in the DeWitt device, there would be no motivation to modify the device of DeWitt to isolate the motor from the deck.

There would actually be a disincentive to modifying the device of DeWitt in the manner proposed by the Examiner. The first full paragraph of page 13 of Applicant’s Amendment dated February 25, 2005, discusses the details of why one would not be motivated to include the frame-mounted motor of Scarborough on the device of DeWitt. In summary, in order to modify the device of DeWitt to include the frame-mounted motor of Scarborough, an extremely complicated and expensive system would need to be added to the device of DeWitt to transmit torque from the frame-mounted motor, through/over the elevated articulating support arm, and to the deck. The increased complexity and cost associated with modifying the device of DeWitt to include such a torque-transmitting system would actually provide a disincentive to adding a frame-mounted motor to the device of DeWitt, as suggested by the Examiner.

Independent claim 24 is rejected as being obvious over DeWitt in view of Smith. Claim 24 recites “a U-joint coupled between the first and second drive shafts.” The Examiner admits that DeWitt fails to disclose a U-joint coupled between the first and second drive shafts. (Office Action of June 21, 2005, page 9, lines 3 and 4). However, the Examiner states that Smith discloses a drive train that includes a “U-joint (32, comprised of parts 24, 26, 28, 30, 50)” and that it would have been obvious “to include the drive train of Smith on the device of DeWitt in order to avoid obstructions.” (Office Action of June 21, 2005, page 9, lines 21 and 22).

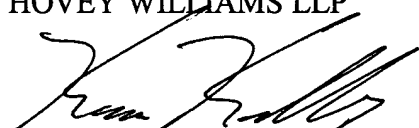
For the same reasons discussed above with respect to the U-joint recited in independent claim 1, Smith fails to disclose the U-joint recited in independent claim 24. Therefore, a proper *prima facie* case of obviousness has not been established with respect to independent claim

24 because the combination of DeWitt and Smith fail to disclose all the elements (particularly the U-joint) recited in claim 24.

In addition, the motivation provided by the Examiner for including the drive train of Smith on the device of DeWitt is improper. The Examiner states that the motivation to modify the device of DeWitt to include the drive train of Smith is "to avoid obstructions." The Examiner further states, "Smith also teaches it is desirable to allow a towed implement pivoting movement through two axes to allow for movement through obstruction and to help the implement better follow terrain." (Office Action of June 21, 2005, page 10, lines 17-19). However, the device of DeWitt already provides pivoting movement through two axes. The first pivot axis of the DeWitt device is a vertical pivot axis defined by mast 38 (FIG. 6) rotating in post 35 (FIG. 3). (*See*, DeWitt, Col. 4, lines 46-48). The second pivot axis of the DeWitt device is a horizontal pivot axis defined by boom member 43 (FIG. 6) rotating in horizontal leg 40 (FIG. 6). (*See*, DeWitt, Col. 4, lines 53-55). Therefore, because DeWitt already provides pivoting movement through two axes, Examiner's stated motivation to modify the device of DeWitt to include the drive train of Smith is improper.

Respectfully submitted,  
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